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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re R.B. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

DONNA K.,

Defendant and Appellant.

E040703

(Super.Ct.No. INJ013197)

OPINION

APPEAL from the Superior Court of Riverside County. Christopher J. Sheldon,
Judge. Appeal dismissed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and
Appellant.

Joe S. Rank, County Counsel, and Carole A. Nunes Fong, Deputy County
Counsel, for Plaintiff and Respondent.

Lori A. Fields, under appointment by the Court of Appeal, for Minor H.B.

Jennifer Mack, under appointment by the Court of Appeal, for Minors R.B., A.B., and S.B.

I. INTRODUCTION

Donna K. (grandmother), the maternal grandmother of minors R.B. (born in 1998), A.B. (born in 1999), S.B. (born in 2000), H.B. (born in 2002), and D.B. (born in 2003), appeals from (1) the denial of her petition under Welfare and Institutions Code¹ section 388 petition, (2) the failure to order sibling visitation for H.B. when terminating parental rights; (3) the denial of her motion to relieve minors' counsel due to a conflict of interest, (4) the denial of her request for a bonding study, (5) the juvenile court's failure to find the sibling relationship exception to adoption applied, and (6) the finding that notice requirements of the Indian Child Welfare Act (ICWA) had been complied with. Counsel for H.B. has moved to dismiss the appeal as moot. Grandmother did not file any opposition to the motion. We agree with H.B.'s position that the appeal is moot, and we therefore order that the appeal be dismissed.

II. FACTS AND PROCEDURAL BACKGROUND

The following statement of facts is taken from our opinion in Case No. E040422, father's appeal from the termination of his parental rights under section 366.26 as to H.B.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

In that appeal, father raised issues substantially similar to those grandmother raises in the present appeal.

“In 2001, R.B., A.B., and S.B. were removed from parents’ custody in a prior dependency proceeding and placed with their maternal grandmother (grandmother). When the parents failed to reunify with the children, the children were placed with grandmother under a plan of legal guardianship. That dependency case was closed in December 2001.

“In February 2005, D.B. was living with mother at a motel, and the other four children, including H.B., were with grandmother. H.B. was still in the legal custody of her parents. D.B. was declared a dependent child and removed from parental custody. Reunification services were denied to parents under section 361.5, subdivision (b)(10).

“In March 2005, the Riverside County Department of Public Social Services (DPSS) received a report that the four oldest children were going back and forth between mother and grandmother. The DPSS contacted grandmother, who said that the four children were living with her, and she was not aware of the whereabouts of mother or father. The DPSS told grandmother that the children were not permitted to be in parents’ care and advised grandmother to seek immediately legal guardianship of H.B. Over the next several weeks, grandmother gave various excuses for failing to seek guardianship of H.B.

“In May 2005, police responded to a report of a physical altercation between mother and grandmother at grandmother’s home. As a result, a section 5150 hold was placed on mother.

“That same month, a DPSS social worker met police officers at grandmother’s home. The home was old and in disrepair; the walls and ceiling were filthy and had cobwebs. Grandmother told the police that mother had been living with her for about two months before the altercation, which had resulted from grandmother’s telling mother she needed to get a job. Grandmother said she had not obtained guardianship of H.B. because she was afraid of mother, and mother had become angry every time the subject had been raised and had refused to sign the papers.

“The DPSS took the children into protective custody and filed a dependency petition under section 300, subdivisions (b), (g), and (j), on behalf of H.B. The petition alleged she was in need of the protection of the juvenile court because of mother’s mental illness, father’s incarceration on a drug-related conviction, and the denial of reunification services in the pending dependency case involving D.B. At the detention hearing, the juvenile court found that the DPSS had made a prima facie showing and set the matter for a jurisdictional hearing.

“The report prepared for the jurisdictional hearing recommended that H.B. be declared a dependent of the juvenile court and that parents be denied reunification services under section 361.5, subdivision (b)(10). The report reiterated that grandmother had been advised to seek legal guardianship of H.B. but had failed to do so. The report

also stated that father was incarcerated, and Mother had been staying at the animal shelter where she worked. H.B. was placed in a foster home with her three older sisters.

“An addendum report recommended that grandmother be offered reunification services. Each of the three older girls had expressed a desire to return to her. Grandmother had already begun counseling and parenting education classes, but had not yet completed necessary repairs to her home.

“At the jurisdictional hearing, father remained in custody. The juvenile court sustained the petition and set the matter for a contested dispositional hearing.

“The report prepared for the dispositional hearing continued to recommend denial of reunification services to parents. The dispositional hearing with respect to H.B. was scheduled at the same time as the dispositional hearing for the three older sisters. All four girls remained in the same foster home. The report prepared for the oldest girls’ dispositional hearing stated that grandmother had allowed the children to ‘yo-yo back and forth between the parents and herself.’

“At the hearing, the DPSS asked that reunification services be provided to grandmother as to R.B., A.B., and S.B. only, but not as to H.B. Grandmother objected and informed the court she wanted to adopt H.B. and that she did not want to separate the children. The court inquired of the DPSS whether it was not ‘usually interested in keeping the siblings together.’ The social worker stated that grandmother was not H.B.’s legal guardian, and the DPSS was looking for a permanent plan for H.B. H.B.’s attorney

told the court that H.B.'s permanent plan could include placement with grandmother, provided she obtained suitable housing and '[met] the qualifications.'

"The report prepared for the review hearing stated that H.B. continued in the same foster placement with her sisters. Father was still incarcerated, but was scheduled to be released in February 2006. He was participating in substance abuse services and parenting classes and had expressed a desire to have all the children returned to him on his release. He had not had any visits with H.B.

"Grandmother had biweekly visits with all four girls. The visits were positive, and the children cried at the end of each visit and stated they wanted to return home to grandmother. H.B. and her sisters also had visits with D.B., who had been placed with the paternal grandmother.

"The DPSS reported that paternal family members wanted to adopt H.B. and D.B. and were in the process of having their home certified for placement. The DPSS indicated that if that placement did not work out, the DPSS would locate a nonrelative prospective adoptive family for H.B.

"Grandmother was upset that H.B.'s case was separate from that of the older children, and she stated she was working hard to get all five children back with her. Her current house was too small, and she could not afford a larger one. She had made repeated requests of the DPSS to assist her with housing.

"At the review hearing, the DPSS recommended another six months of services for grandmother with respect to R.B., A.B., and S.B., and that she be permitted day,

overnight, and weekend visits once she obtained suitable housing. Grandmother's attorney requested the court to order financial assistance for grandmother to obtain suitable housing. The attorney stated that grandmother was 'heartbroken' over the prospect of H.B. being separated from her sisters.

"The report prepared for the section 366.26 hearing stated that H.B. and D.B. had been moved to the prospective adoptive home of the C.s.² Visits between H.B. and her sisters and grandmother had been suspended in order for her to 'appropriately bond with the potential adoptive parents,' but would resume once H.B. stabilized in her placement. The report acknowledged that grandmother wanted to have H.B. placed with her, but that grandmother had not yet obtained appropriate housing.

"A preliminary adoption assessment of the C.s indicated they were nonrelated extended family members who desired to adopt H.B. and D.B. They had begun the process of approval for adoption. They had been live-scanned prior to the placement of the children with them, but the results of their live-scans for the adoption department were not yet known.

"The assessment reported that the C.s had the ability to meet the children's basic needs. However, the C.s had had no experience with raising children or in dealing with abused or neglected children. The report stated that H.B. and D.B. had 'experienced disruption and multiple placements,' which might contribute to 'social and emotional

² The C.s are referred to as paternal cousins, but they are cousins by marriage who have no blood relationship to the children.

problems as they grow up.’ The C.s did not ‘have a lot of insight into these dynamics,’ and it was recommended that they participate in adoption training. The preliminary adoption assessment also stated that the prospective adoptive parents were ‘committed to providing the children with a stable, loving home’; they were ‘very excited to have the children in their care,’ and they were ‘attentive to the children’s needs.’

“A service log attached to the report indicated that H.B. was crying and confused when she was placed with the C.s. A month later, she was ‘still adjusting’ to the placement, although she appeared healthy and was ‘not in distress.’

“Grandmother filed a section 388 petition seeking to set aside the order setting a section 366.26 hearing for H.B. Grandmother alleged that H.B. had recently been separated from her sisters and was not allowed visits with them. Grandmother stated that H.B. was bonded to her older sisters, and permanent separation from them would be devastating. Grandmother admitted she had erred in allowing parents to have unauthorized contact with the children. She explained that she had not been provided with guidelines when she was awarded legal guardianship, but she now understood that parents were not to have unauthorized contact with the children. She wanted to change the permanent plan for the older children to adoption, and she also wanted to adopt H.B. and D.B. Grandmother asserted that H.B. was not bonded to her current caretakers, but she was bonded to her sisters and to grandmother. H.B. had been ‘distraught’ when a recent visit with her sisters and grandmother had ended, and she wanted to reunite with

her sisters and grandmother. Grandmother attached various declarations attesting to H.B.'s distress at the end of the visit and her desire to be reunited with her sisters.

“Grandmother filed a motion requesting the court to order a bonding study between H.B. and her siblings and grandmother, or in the alternative, a psychological evaluation to assess the effect on H.B. of permanent separation from her siblings. Grandmother also requested the court to find that the children's attorney had a conflict of interest in representing all four children because the three older girls did not want to be separated from H.B., but the attorney was recommending adoption for H.B.

“The children's attorney opposed the request for a bonding study and psychological evaluation on the ground it would result in unnecessary delay. She also asserted the sibling bond would be maintained post adoption, and she indicated she had no conflict of interest because the children were ‘fortunate to be placed in homes where they will continue to know each other and have continued contact.’ The juvenile court found there was no conflict of interest in the children's attorney representing all five children.

“At the hearing, grandmother's attorney argued that a sibling study or psychological evaluation needed to be performed to assess the longterm effect on H.B. of separating her from her sisters. The children's attorney argued that if H.B. were removed from the C.s to be reunited with her sisters, it would leave D.B. alone with the C.s, and he could not be removed without showing an abuse of discretion by the DPSS. If the court

removed H.B. to be with her sisters, it would be saying she did not need to be with her brother.

“Father’s counsel argued that a bonding study was appropriate for the four girls who had lived together most of their lives. D.B., however, had never lived with all of them and was not in the same household.

“The social worker stated she had just received a positive home evaluation for grandmother, and the three oldest girls would be returned to her in the next few days.

“The juvenile court denied the request for a bonding study. The court acknowledged it was very important that the children maintain close relationships, which meant ‘frequent and liberal contact between the siblings.’ The court encouraged the DPSS to develop a plan under which the three oldest girls could maintain contact with H.B.

“The court then proceeded to the section 366.26 phase of the hearing. Father’s attorney informed the court that father had been recently released from incarceration. He was participating in services, and he objected to termination of his parental rights.

“The juvenile court found that H.B. was likely to be adopted and that adoption was in her best interest. The court terminated father’s and mother’s parental rights. The court did not make any express finding on the sibling benefit exception to termination of parental rights.” (Slip opinion No. E040422, pp. 2-10.)

III. DISCUSSION

Counsel for H.B. has moved to dismiss the appeal as moot. The motion notes that grandmother filed a notice of appeal only from the orders denying her section 388 petition and denying her motions to declare a conflict of interest as to minors' counsel and to order a sibling relationship study. In the section 388 petition, grandmother sought to set aside the order setting the matter for a section 366.26 hearing.

The juvenile court denied grandmother's petition and denied grandmother's motions to declare a conflict of interest and to order a sibling relationship study. The juvenile court then conducted the section 366.26 hearing, following which it terminated parental rights as to H.B. Grandmother's notice of appeal was not directed toward the section 366.26 orders.

Father took an appeal from the section 366.26 order, raising issues substantially similar to those grandmother raises. We rejected father's claims on appeal and affirmed the juvenile court's orders terminating parental rights. The remittitur issued on December 6, 2006, and the orders terminating parental rights are now final.

It is well established that "[a]n order of the dependency court terminating parental rights may be modified only by a timely direct appeal from the order." (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316 (*Jessica K.*)). "Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order,

the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.” (§ 366.26, subd. (i)(1).)

When the Court of Appeal can grant no effective relief, an appeal is rendered moot and will be dismissed. (*Jessica K.*, *supra*, (2000) 79 Cal.App.4th at pp. 1315-1316.) In *Jessica K.*, the mother of a dependent child appealed from an order denying her section 388 petition. The juvenile court subsequently terminated parental rights, but the mother did not appeal from that order, which became final. (*Jessica K.*, *supra*, at pp. 1316-1317.) The Court of Appeal thereafter dismissed mother’s appeal from the order denying the section 388 petition as moot because there was no effective relief it could possibly grant to mother. (*Id.* at pp. 1315-1316; see also *In re Albert G.* (2003) 113 Cal.App.4th 132, 135 [the appeal of the minor’s aunt and former caretaker from the denial of a section 388 petition was moot because there was no possibility of any effective relief on appeal when the minor had subsequently been adopted].)

As noted above, the parents’ appellate rights have been exhausted; the remittitur issued in father’s appeal on December 6, 2006. Thus, there is no relief the juvenile court could grant grandmother. (§ 366.26, subd. (i)(1).) Rather, once the natural parents’ appellate rights are exhausted, the juvenile court is required to proceed to finalize the minor’s adoption. (§ 366.26, subs. (e) & (j).)

Because neither this court nor the juvenile court can grant grandmother any relief with respect to her claims regarding H.B., we dismiss the appeal as moot.

IV. DISPOSITION

The appeal is dismissed.

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HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

KING

J.